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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 231

WABANINGO BOY SCOUT CAMP,
A Michigan Nonprofit Corporation,

Appellant,

vs.

MICHIGAN STATE TAX COMMISSION,

Appellee.

No. 232

EVANSTON Y.M.C.A. CAMP,
A Michigan Nonprofit Corporation,

Appellant,

vs.

MICHIGAN STATE TAX COMMISSION,

Appellee.

Appeals from the Supreme Court of Michigan

STATEMENT AS TO JURISDICTION

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Appeals from the Supreme Court of Michigan

STATEMENT AS TO JURISDICTION

A single jurisdictional statement covering both of these cases is being filed under Rule 15(3).

Opinions Below

The opinions of the Supreme Court of Michigan in both cases appear in the Appendix hereof. *Wabaningo Boy Scout Camp* is reported in 369 Mich. 165, 119 N.W. 2d 648, and

Y.M.C.A. Camp in 369 Mich. 1, 118 N.W. 2d 818. The opinion in *Wabaningo* is a brief judgment based on the full opinion in *Y.M.C.A. Camp.*

Nature of the Proceedings

Appellants brought these actions in the Supreme Court of Michigan to review orders of the Michigan State Tax Commission holding appellants' real estate correctly assessed for taxation. Michigan Statutes Ann. 1960, §§ 27.2601, 27.2602; Rule 60 Michigan Court Rules; *In re Dearborn Clinic and Diagnostic Hospital,* 342 Mich. 673, 71 N.W. 2d 212 (1955).

Appellants contended that the Commission's orders erroneously construed a Michigan statute, and that as so construed the statute deprived appellants of equal protection of the laws in violation of the Fourteenth Amendment in that it denied appellants tax exemption, accorded generally to Boy Scout and Y.M.C.A. organizations, on the sole ground that appellants' members are nonresidents of Michigan. The Court affirmed the Commission's orders, sustained the Commission's construction of the statute (Appendix 8a-10a), and held that the statute did not violate the Fourteenth Amendment (App. 10a-12a).

Judgments Below

In *Wabaningo Boy Scout Camp* the opinion of the Supreme Court of Michigan was filed February 6, 1963, and motion for rehearing was denied April 5, 1963. In *Y.M.C.A. Camp* the Court's opinion was filed December 31, 1962, and motion for rehearing was denied February 5, 1963. Notice of appeal in each case was filed April 30, 1963, in the office of the Clerk of the Supreme Court of Michigan.

Statutory Basis for Jurisdiction

The jurisdiction of this Court to review on appeal the judgments of the Supreme Court of Michigan is conferred by 28 U.S.C. § 1257(2).

Cases Sustaining Jurisdiction

Cases which sustain the jurisdiction of this Court are *Wheeling Steel Corporation* v. *Glander*, 337 U.S. 562, 568 note 3 (1949); *Atchison, Topeka & Santa Fe Railway Co.* v. *Public Utilities Commission*, 346 U.S. 346, 347-349 (1953); *Home Insurance Co.* v. *Dick*, 281 U.S. 397, 407 (1930).

Statute Involved

The Michigan statute, validity of which is involved, is the following, the pertinent part being set out in our own italics (Paragraph Fourth of section 7 of the general property tax act as amended by P.A. 1960, No. 155 (C.L. 1948, § 211.7 [Stat. Ann. 1960 Rev. § 7.7, as amended])):

"The following property shall be exempt from taxation:—

* * * *

"Fourth, Such real estate as shall be owned and occupied by library, benevolent, charitable, educational or scientific institutions and memorial homes of world war veterans incorporated under the laws of this state with the buildings and other property thereon while occupied by them solely for the purposes for which they were incorporated. Also charitable homes of fraternal or secret societies. *Also real estate not to exceed 400 acres of land in this state owned by any boy or girl scout organization, or by young men's Christian associations or young women's Christian associations, if at least 50% of the membership of the associations or organizations are residents of this state, while occupied by them solely for the purpose for which they were incorporated or established.* Also real estate, with the

buildings and other property thereon, owned and occupied by any non-profit trust and used for hospital or public health purposes; * * *" (Emphasis added).

Question Presented

Whether the statute deprives appellants of equal protection of the laws, in violation of the 14th amendment, by denying them exemption from taxation solely because more than 50 per cent of their membership are nonresidents, while like organizations are exempt if at least 50 per cent of their membership are residents.

Statement of the Case

Each appellant is a non-stock, non-profit, membership corporation of the state of Michigan.

The articles of appellant Wabaningo Boy Scout Camp provide that it shall have twelve corporate members who shall be members of and shall be elected by Evanston Council of the Boy Scouts of America, an Illinois non-profit corporation. Appellant Wabaningo Boy Scout Camp owns 350 acres of improved real estate in Michigan which is used for camping by the Boy Scouts and adult leaders of Evanston Council of the Boy Scouts of America. These are residents of Illinois.

The articles and by-laws of appellant Evanston Y.M.C.A. Camp provide that it shall have ten corporate members who shall be members of and shall be elected by Evanston, Illinois, Y.M.C.A. Appellant Evanston Y.M.C.A. Camp owns 67 acres of improved real estate in Michigan which is used for camping by the members of Evanston Y.M.C.A. These are residents of Illinois.

Before the enactment of the statute here in issue all Boy Scout and Y.M.C.A. organizations were accorded exemp-

tions from taxation by the Michigan laws without any distinctions as to residence. Y.M.C.A. property was wholly exempt. Boy Scout property up to 160 acres was exempt.

By paragraph "Fourth" above set out, effective August 17, 1960, these exemption provisions were changed to provide that Boy Scout and Y.M.C.A. organizations shall have no exemption whatsoever from taxation if more than 50 per cent of their membership are residents of states other than Michigan, whereas such organizations shall have 400 acres exempt if at least 50 per cent of their membership are Michigan residents.

The words "member" and "membership" are used in the Michigan statutes authorizing the creation and operation of non-profit corporations to mean the organizers and corporate members of such corporations. On the assumption that the word "membership" in paragraph Fourth had the meaning employed in the corporation statutes, each appellant amended its articles of incorporation to provide that at least 50 per cent of its members shall be residents of Michigan. Then six residents of Illinois and six residents of Michigan were elected the corporate members of appellant Wabaningo Boy Scout Camp by Evanston Council of the Boy Scouts of America; and five residents of Illinois and five residents of Michigan were elected the corporate members of appellant Evanston Y.M.C.A. Camp by Evanston Y.M.C.A. These corporate actions were completed before December 31, 1960, the "tax date" determining the status of persons and property for 1961 taxes. (See App. 10a).

Thereafter each appellant presented timely representations to the Michigan tax officials that it was entitled to exemption from 1961 taxes because 50 per cent of its membership were residents of Michigan. But these officials up to and including the Michigan State Tax Commission, appellee

herein, denied the exemptions requested. The Tax Commission held that the word "membership" in paragraph "Fourth" did not mean the corporate members of appellants but that it meant instead the Boy Scouts and Y.M.C.A. members using the camps, who are residents of Illinois. The Tax Commission therefore held that each appellant's real estate was correctly assessed for 1961 taxes.

Appellants then brought these actions in the Supreme Court of Michigan alleging (1) that the Tax Commission erred in holding on the facts above set forth that appellants were not entitled to exemption, and (2) that the construction of the statute adopted by the Commission deprived appellants of equal protection of the laws in violation of the 14th Amendment in that it made exemption turn on whether the Boy Scouts or Y.M.C.A. members using the camps were residents or nonresidents of Michigan. But the Court approved the Commission's construction of the statute (App. 8a-10a) and held that it did not violate the 14th Amendment (App. 10a-12a). The Court summarized its Constitutional holding as follows (App. 12a):

> "The clause 'if at least 50% of the membership of the associations or organizations are residents of this state' is not unconstitutional and invalid as a discrimination based on residence prohibited by section 1 of the Fourteenth Amendment to the Federal Constitution guaranteeing equal protection of the law."

The Federal Question Is Substantial

1.

The Supreme Court of Michigan has here approved a form of ad valorem tax discrimination against appellants that has been uniformly condemned by this Court. A statute granting tax exemption to a class violates the equal protection clause insofar as it denies exemption to part of the

class solely on the basis of nonresidence. *Wheeling Steel Corporation* v. *Glander*, 337 U.S. 562, 572 (1949); *Hanover Fire Insurance Co.* v. *Harding*, 272 U.S. 494, 516 (1926); *Travis* v. *Yale & Towne Manufacturing Co.*, 252 U.S. 60, 79-80 (1920); *Southern Railway Company* v. *Greene*, 216 U.S. 400, 417-418 (1910). And see concurring opinion in *Allied Stores* v. *Bowers*, 358 U.S. 522, 530-533 (1959). In *Travis*, *supra*, the denial to nonresidents of a tax exemption accorded residents was held violative of the privileges and immunities guaranty of Section 2 of Article 4; but as the other cases in this paragraph show, the statute in *Travis* would have been vulnerable under the equal protection clause. (Violation of both equal protection and privileges and immunities was alleged in *Travis*, pp. 72-73.) "The equal protection clause of the Fourteenth Amendment protects the individual from state action which selects him out for discriminatory treatment by subjecting him to taxes not imposed on others of the same class." *Hillsborough Township* v. *Cromwell*, 326 U.S. 620, 623 (1946). In respect to taxation, "the federal right of a nonresident 'is the right to equal treatment.'" *Wheeling Steel Corporation* v. *Glander*, *supra* (p. 572).

2.

The Court apparently rested its decision on the following conclusions in its opinion (App. 11a):

> "This is not a case where the legislature singled out a particular class denoted 'nonresidents' for the purpose of imposing a tax. *No discrimination between 'residents' and 'nonresidents' is involved, since appellant is a Michigan corporation.* (Emphasis added)
>
> "The only constitutional question refers to the power of the legislature to classify property for ad valorem property tax exemptions by determining it would exempt from taxation certain associations and organiza-

tions when 50% of their membership resided in Michigan."

While the construction by the Supreme Court of Michigan, that the word "membership" in the statute means the campers attending the camps, is not subject to review here, this Court will exercise its independent judgment in determining whether the statute as so construed and as otherwise characterized and applied by the Michigan Court violates the 14th Amendment. *Hanover Fire Insurance Co.* v. *Harding*, *supra*, 272 U.S. 494, 509. Whatever the breadth or narrowness of the Michigan Court's decision holding the 14th Amendment not violated, appellants are entitled to full consideration of the Constitutional question here. *Lawrence* v. *State Tax Commission of Mississippi*, 286 U.S. 276, 281-283 (1932); *National Association For The Advancement of Colored People* v. *Alabama*, 357 U.S. 449, 454-455 (1958).

The conclusions of the Michigan Court set forth above are palpably erroneous. The classification made by paragraph Fourth has only one element, the residence or nonresidence of appellants' membership, the Boy Scouts or Y.M.C.A. members using the camps. The statute has no other effect as construed by the Supreme Court of Michigan but to discriminate against appellants because appellants' membership as defined by the Court are nonresidents.

The basis of the Court's conclusions, that paragraph Fourth works no discrimination against nonresidents because appellants are Michigan corporations, apparently expresses a holding that appellants are not affected by the statute and lack standing to object to it. This holding is directly at odds with many decisions of this Court. Since the denial of tax exemption rests entirely on the nonresidence of appellants' membership as defined by the Court, there is discrimination between residents and nonresidents

that brings appellants within the protection of *Wheeling Steel Corporation* v. *Glander*, *supra*, 337 U.S. 562, 572, and the other cases cited with it, because of the close relationship between each appellant and its membership and the direct and substantial impact of paragraph Fourth upon appellants due to that relationship. This is made clear by this Court in a number of related applications of the principle.

First, *National Association for the Advancement of Colored People* v. *Alabama*, *supra*, 357 U.S. 449, 459-460; *International Harvester Co.* v. *Wisconsin Department of Taxation*, 322 U.S. 435, 440 (1944); *Voeller* v. *Neilston Warehouse Company*, 311 U.S. 531, 537 (1941). These cases hold that where a corporation is substantially affected by state action which deals unconstitutionally with its members or stockholders, it may challenge the constitutional validity of that action. Cf. concurring opinion in *First Unitarian Church of Los Angeles* v. *County of Los Angeles*, 357 U.S. 545, 547 (1958).

Second, *Travis* v. *Yale & Towne Manufacturing Co.*, *supra*, 252 U.S. 60, 75. A state income tax law required employers to deduct the tax from employees' earnings and granted resident employees a tax exemption not given to nonresident employees. The employer as sole complainant was permitted to attack the unconstitutional discrimination against nonresident employees because of the possible impact of the act upon the employer.

Third, *Pierce* v. *Society of Sisters*, 268 U.S. 510, 530, 534-536 (1925); *Truax* v. *Raich*, 239 U.S. 33, 38-39 (1915); *Buchanan* v. *Warley*, 245 U.S. 60, 72-73 (1917). The principle of these cases is exemplified in *Pierce*, *supra*, where an Oregon statute operating solely upon parents and requiring them to send children below the 9th grade to public schools was held violative of the 14th Amendment as to and

upon the suit of a private school because of the impact upon private schools of the unconstitutional restriction upon parents.

Fourth, appellants as owners of the taxed real estate and by virtue of total corporate integration and identity with Evanston Council of the Boy Scouts of America and Evanston Y.M.C.A. have standing respectively to assert every consitutional right extending to Evanston Council, Evanston Y.M.C.A., and the affected boy scouts and Y.M.C.A. members, which is impinged by paragraph Fourth. *National Motor Freight Traffic Association, Inc.* v. *United States*, 372 U.S. 246 (1963).

3.

Wabaningo Boy Scout Camp is obviously a "boy scout organization" within the meaning of paragraph Fourth, whose "membership" as construed by the Court below is the Boy Scouts using the camp. And see 36 U.S.C. § § 21-29, incorporating the "Boy Scouts of America" as a national corporation, particularly § 27 which limits the use of the term "Boy Scouts" to licensees of the national corporation. Similarly, Evanston Y.M.C.A. Camp is a "young men's Christian association" under paragraph Fourth.

There are 17 councils of the Boy Scouts of America established within Michigan with Boy Scout enrollment in 1961 ranging from 1,355 in the smallest to 25,998 in the largest. (House Doc. No. 369, 87th Cong. 2d Sess., pp. 216-218, Annual Report to Congress, 1961, of the Boy Scouts of America, pursuant to 36 U.S.C. § 28). Thus there is a substantial class exempted by paragraph Fourth. We believe that this Court may take judicial notice that the Y.M.C.A., like the Boy Scouts, have numerous local organizations in all states including Michigan. It must be presumed, as adverted to by the Court below (App. 10a, 11a), that the legislature knew

of the existence of a class that would be favored by the exemption.

It should be noted that the terms of paragraph Fourth that deny tax exemption if more than 50 per cent of the membership are nonresidents are tantamount in practical effect to a denial of exemption if *any* of the membership are nonresidents. This is so because individual Boy Scout councils and young men's Christian associations are organized within geographical subdivisions of states. Thus the members of these organizations are residents of a particular geographical area within a state.

Effect of the 1961 Amendment of Paragraph Fourth

The Michigan legislature amended paragraph Fourth in 1961 by adding to the clause "if at least 50% of the membership of the associations or organizations are residents of this state" the following (App. 4a-5a):

> "but upon petition of any association or organization the Board of Supervisors may waive the residence requirement."

The Michigan Court held that this amendment, which became effective August 6, 1961, could have no application to liability for the 1961 taxes here in issue since that liability was determined under the Michigan statutes as of December 31, 1960. (App. 9a-10a).

But it should be noted that the 1961 amendment does not in any respect relieve paragraph Fourth from the unconstitutionality that existed before the amendment became effective. Thus the amendment does not have the effect of limiting the constitutional question to only one year's taxes. Since the residence requirement of paragraph Fourth was invalid before the 1961 amendment, the granting to the Board of Supervisors of absolute discretion either to waive

or to refuse to waive the unconstitutional residence requirement does not make paragraph Fourth any less objectionable under the Fourteenth Amendment. *Chicago* v. *Atchison, Topeka & Santa Fe Railway Co.*, 357 U.S. 77, 89 (1958); *Staub* v. *Baxley*, 355 U.S. 313, 319 (1958); *Public Utilities Commission of California* v. *United States*, 355 U.S. 534, 539-540 (1958); *Smith* v. *Cahoon*, 283 U.S. 553, 562 (1931).

Thus the same constitutional question exists not only as to 1961 taxes but as to taxes for all following years, despite the 1961 amendment. The validity of paragraph Fourth as to taxes after 1961 is determinable in this case. "[W]here the only question is whether it is constitutional to fasten the administrative procedure onto the litigant, the administrative agency may be defied and judicial relief sought as the only effective way of protecting the asserted constitutional right." *Public Utilities Commission* v. *United States*, *supra*, 355 U.S. 534, 540. See other cases cited in preceding paragraph. The judicial relief here being sought is just as applicable to paragraph Fourth after the 1961 amendment.

CONCLUSION

The question here, one that deeply concerns the Federal system, is so substantial as to require plenary consideration by the Court.

Respectfully submitted,

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APPENDIX

STATE OF MICHIGAN
SUPREME COURT
Filed Feb. 6, 1963

WABANINGO BOY SCOUT CAMP, a Michigan nonprofit corporation,
Plaintiff and Appellant,

v.

MICHIGAN STATE TAX COMMISSION,
Defendant and Appellee.

Before the entire Bench, except ADAMS, J.
DETHMERS, J.

The pertinent facts, questions involved, and applicable law in this case are the same as in Evanston Y.M.C.A. Camp v. State Tax Commission, 369 Mich 1. Decision in that case is controlling here.

Affirmed. No costs.

STATE OF MICHIGAN

SUPREME COURT

Filed Dec. 31, 1962

EVANSTON Y.M.C.A. CAMP,
a Michigan nonprofit corporation,
Plaintiff and Appellant,

v.

STATE TAX COMMISSION,
Defendant and Appellee.

Before the entire Bench, except ADAMS, J.

KELLY, J.

The Sherman township, Newaygo county, supervisor assessed appellant's property at a $20,000 valuation. Appellant protested, claiming the property was legally exempt. The board of review denied the petition for exemption. The State tax commission affirmed the board of review, and, on leave granted, this appeal is taken in the nature of certiorari.

Appellant was duly incorporated (November 22, 1923) as a Michigan nonprofit, nonstock, membership corporation, and its purposes were described in article 3 as follows:

> "To provide benevolent and charitable means whereby young men and boys may obtain physical, social, moral, and religious culture, and the development of Christian character through life in the out-of-doors; to hold, own, and purchase or otherwise acquire, and to sell, convey, mortgage, handle, manage, or otherwise dispose of, any real or personal property, that may,

> in the judgment of the trustees or directors of this corporation, be necessary or proper to carry out and effectuate the purposes aforesaid."

In 1923 appellant acquired less than 400 acres of land in Newaygo county and has improved same by constructing thereon a dining hall, social lodge, infirmary, 14 cabins, craft shop, warehouse, pump house, and directors' cabin.

Appellant contends the property is exempt from taxation for the year 1961 under paragraph "Fourth," of section 7 of the general property tax act as amended by PA 1960, No 155 (CL 1948, § 211.7 [Stat Ann 1960 Rev § 7.7, as amended]).

In construing said paragraph we follow the cardinal rule that effect must be given to all statutory language employed by the legislature and that the history of legislation should be considered in determining the purpose of the legislature.

In *Remus* v. *City of Grand Rapids*, 274 Mich 577, 581, we stated:

> "'"In the construction of a particular statute, or in the interpretation of any of its provisions, all acts relating to the same subject, or having the same general purpose, should be read in connection with it, as together constituting one law. The endeavor should be made, by tracing the history of legislation on the subject, to ascertain the uniform and consistent purpose of the legislature, or to discover how the policy of the legislature with reference to the subject-matter has been changed or modified from time to time." 36 Cyc pp 1147-1149.' (Quoted in *Miles, ex rel. Kamferbeek*, v. *Fortney*, 223 Mich 552, 558.)"

The history of the act in question discloses that the pertinent portion of paragraph "Fourth" has been amended 4 times since 1938. Prior to its amendment by PA 1939,

No 232, this paragraph contained only 2 sentences, and read as follows:

> "Fourth, Such real estate as shall be owned and occupied by library, benevolent, charitable, educational or scientific institutions and memorial homes of world war veterans incorporated under the laws of this state with the buildings and other property thereon while occupied by them solely for the purposes for which they were incorporated. Also charitable homes of fraternal or secret societies."

PA 1939, No 232, added 1 additional sentence:

> *"Also real estate owned by any boy or girl scout organization, while occupied by them solely for the purpose for which they were incorporated or established."*

This sentence, however, was amended by PA 1941, No 125, to read:

> "Also real estate *not to exceed 160 acres of land* owned by any boy or girl scout organization, while occupied by them solely for the purpose for which they were incorporated or established."

PA 1960, No 155, again amended this sentence so that it read:

> "Also real estate not to exceed *400* acres of land *in this state* owned by any boy or girl scout organization, *or by young men's Christian associations or young women's Christian associations, if at least 50% of the membership of the associations or organizations are residents of this state,* while occupied by them solely for the purpose for which they were incorporated or established."

This same sentence was last amended by PA 1961, No 238, by inserting between the words "state" and "while," the following language: *"but upon petition of any associa-*

tion or organization the board of supervisors may waive the residence requirement."

It is appellant's position that 4 categories of exempt property are provided by said paragraph "Fourth" and that each of the 4 sentences thereof contains a description of at least 1 such category that is separate and distinct from the others; that appellant's real estate falls within the scope of the category of the first sentence which exempts real estate owned and occupied by "benevolent, charitable, educational * * * institutions" and, also, by the third sentence exempting real estate of "young men's Christian associations or young women's Christian associations."

Appellant, citing Ready-Power Company v. City of Dearborn, 336 Mich 519, states that it is a "fundamental principle that tax laws are to be construed liberally in favor of the taxpayer."

Appellant raises the following question:

> "Is there any evidence in the certified original record to support the order of the tax commission determining that such real estate of appellant is correctly assessed and that the assessment has been made in compliance with law?"

Appellant evidently proceeds on the fallacious theory that it is entitled to exemption unless the commission established that it was not entitled to an exemption.

While it is true that the imposition provisions of a taxing statute should be construed in favor of the taxpayer, this rule of construction does not supplant or eliminate the important rule to be applied in the question here presented: That exemption provisions must be strictly construed in favor of the taxing agency.

We made this clear in City of Detroit v. Detroit Commercial College, 322 Mich 142, when we quoted 2 Cooley on Taxation (4ed), § 672, p 1403, as follows (p 149):

> "Exemptions are never presumed, the burden is on a claimant to establish clearly his right to exemption, and an alleged grant of exemption will be strictly construed and cannot be made out by inference or implication but must be beyond reasonable doubt. In other words, since taxation is the rule, and exemption the exception, the intention to make an exemption ought to be expressed in clear and unambiguous terms; it cannot be taken to have been intended when the language of the statute on which it depends is doubtful or uncertain; and the burden of establishing it is upon him who claims it. Moreover, if an exemption is found to exist, it must not be enlarged by construction, since the reasonable presumption is that the State has granted in express terms all it intended to grant at all, and that unless the privilege is limited to the very terms of the statute the favor would be extended beyond what was meant.'"

When we construe statutory language containing both specific and general provisions, we adopt the rule set forth in 50 Am Jur, Statutes, § 367, p 371:

> "Where there is in the same statute a specific provision, and also a general one which in its most comprehensive sense would include matters embraced in the former, the particular provision must control, and the general provision must be taken to affect only such cases within its general language as are not within the provisions of the particular provision."

See, also, Dossin's Food Products, Inc. v. State Tax Commission, 360 Mich 312; Mayor of Port Huron v. City Treasurer of Port Huron, 328 Mich 99.

Is appellant's property exempt under the category provided by the first sentence of paragraph "Fourth" exempting the following:

> "Such real estate as shall be owned and occupied by library, benevolent, charitable, educational or scientific institutions and memorial homes of world war veterans incorporated under the laws of this state with the buildings and other property thereon while occupied by them solely for the purposes for which they were incorporated?"

Appellant did not claim the right of exemption under the provisions referring to charitable, benevolent or educational institutions at the hearing before the board of review or the State tax commission.

Appellant matched the legislature's 1960 amendment granting young men's Christian associations exemption on 400 acres of land if 50% of the membership are residents of the State, by executing (November 30, 1960) an amendment to its articles of incorporation and filing a certificate of same with the Michigan corporation and securities commission disclosing:

> "The qualifications required of officers and members are as follows:—That they be members in good standing of the Y.M.C.A. of Evanston, Illinois, provided, at least 50% of such members shall be residents of the State of Michigan."

We quote with approval the following from appellee's brief:

> "The argument of appellant that the general benevolent, charitable and educational exemption is applicable to it, is untenable. Such an argument gives no effect whatsoever to the restrictive language added to paragraph Fourth by PA 1960, No 155, which amendatory language specifically provides that only those Y.M.C.A.

organizations that meet the resident membership requirement therein set forth are entitled to the property tax exemption therein granted. Such an argument gives no effect to the specific statutory language applicable to Y.M.C.A. organizations and thereby violates a cardinal rule of construction that effect must be given to all statutory language employed by the legislature.* * *

"In arguing that it is entitled to this general exemption as well as to the specific exemption granted Y.M.C.A. organizations, appellant overlooks another cardinal rule of construction which requires the special provisions of an enactment to be read as exceptions to general provisions."

We hold that appellant was not entitled to an exemption under the first sentence of paragraph "Fourth."

Is the real estate of appellant exempt from taxation as falling within the category of the third sentence of the controlling statute, exempting real estate of young men's or young women's Christian associations?

Appellant defines the word "membership" as used in the statute as follows:

"Clearly, the 'ordinary meaning' of the term 'membership' in this statute, as claimed by appellee, does not extend to the campers occupying the camp maintained by the corporation, who need no affiliation whatever with the corporate organization of appellant.

"It is more reasonable to conclude that the legislature imposed the residential requirement to apply to those members who were so charged with the responsibility of the management of the corporate affairs, as to facilitate the enforcement of sanitary and other state laws and regulations, with respect to its operations. This would be an 'ordinary meaning' of the term 'membership,' and not mere formalism."

Appellee answers such contention by stating:

> "It is a strange and constrained construction of the statutory language in question to presume that the legislature, in granting real estate exemptions to young men's and young women's Christian organizations, was concerned with the place of residence of 5 members of the Evanston, Illinois, Y.M.C.A. rather than the utilization of the properties by the youth of this State. It thus seems reasonable to conclude that the legislature used the term 'membership' in the ordinary context when it referred to membership in a young men's Christian organization.
>
> "Undoubtedly, the exemption in question pertains to the concern of the Michigan legislature to make provision for camp and recreation facilities for its youth. To hold otherwise would place empty formalism over substance."

The construction of appellant that the legislature was concerned with "those members who were so charged with the responsibility of the management of the corporate affairs," plus appellant's contention that the legislature used the word "membership" as it used that word in the corporation law, does not meet the fact that the exemption was not confined to corporation but also included unincorporated organizations and associations.

The legislature emphasized the importance it placed upon the 1960 amendment to paragraph "Fourth" providing that "at least 50% of the membership of the associations or organizations are residents of this state," by the 1961 amendment to the same sentence providing that "upon petition of any association or organization the board of supervisors may waive the residence requirement."

The order from which this appeal is taken determined that appellant's land was correctly assessed for 1961 taxes,

and there is merit to appellant's contention that the 1961 amendment to paragraph "Fourth" does not apply to the 1961 assessment because of section 2 of the general property tax act, which reads in part as follows:

> "The taxable status of persons and real property after January 1, 1958, shall be determined as of December 31, 1958, and each December 31 thereafter, which shall be deemed the tax day." CL 1948, § 211.2, as amended by PA 1958, No 209 (Stat Ann 1960 Rev § 7.2).

It is our opinion that the legislature in adopting the 1960 amendment was motivated by a desire to assist the youth of this State rather than by a concern "to facilitate the enforcement of sanitary and other state laws and regulations, with respect to its (the association's) operation," and we hold that the commission did not err in finding that appellant's property was not exempt from taxation by the third sentence of paragraph "Fourth" exempting real estate of "young men's Christian associations or young women's Christian associations."

Is the clause "if at least 50% of the membership of the associations or organizations are residents of this State" unconstitutional and invalid as a discrimination based on residence prohibited by section 1 of the Fourteenth Amendment to the Federal Constitution guaranteeing equal protection of the law?

> "One who assails the constitutionality of a statute must stand on his own right to relief." Duckworth v. Arkansas, 314 US 390, 397.

> "It is a well-established rule of constitutional law that one who would strike down a statute as unconstitutional 'must bring himself, by proper averments and showing, within the class as to whom the act thus attacked is unconstitutional.'" General Motors Corporation v. Attorney General, 294 Mich 558, 566.

This is not a case where the legislature singled out a particular class denoted "nonresidents" for the purpose of imposing a tax. No discrimination between "residents" and "nonresidents" is involved, since appellant is a Michigan corporation.

The only constitutional question refers to the power of the legislature to classify property for ad valorem property tax exemptions by determining it would exempt from taxation certain associations and organizations when 50% of their membership resided in Michigan. We dealt with the power of classification in Banner Laundering Co. v. State Board of Tax Administration, 297 Mich 419, and in deciding that case we quoted from Citizens' Telephone Co. v. Fuller, 229 US 322, as follows (pp 432, 433):

> "'It is manifest, therefore, that there are marked differences between the taxed and nontaxed companies, and the differences might be pronounced arbitrary if the rule urged by appellant should be applied, that is, that in the taxation of property no circumstance should be considered but its value, or, to use appellant's words, "each dollar's worth should be treated alike." But such rigid equality has not been enforced. In Michigan the legislature has the power of prescribing the subjects of taxation and exemption, notwithstanding the Constitution of the State requires the legislature to provide a uniform rule of taxation, except on property paying specific taxes. *People* v. *Auditor General*, 7 Mich 84; *Board of Supervisors* v. *Auditor General*, 65 Mich 408; *National Loan & Investment Co.* v. *City of Detroit*, 136 Mich 451. The power of exemption would seem to imply the power of discrimination, and in taxation, as in other matters of legislation, classification is within the competency of the legislature. We said in *American Sugar Refining Co.* v. *Louisiana*, 179 US 89, 92 (21 S Ct 43, 45 L ed 102), that from time out of mind it has been the policy of this Government to classify for the purpose of taxation.' • • •

"'Granting the power of classification, we must grant Government the right to select the differences upon which the classification shall be based, and they need not be great or conspicuous. *Keeney* v. *Comptroller of New York*, 222 US 525, 536 (32 S Ct 105, 56 L ed 299, 38 LRA [ns] 1139). The State is not bound by any rigid equality. This is the rule; its limitation is that it must not be exercised in "clear and hostile discriminations between particular persons and classes." See *[Quong Wing* v. *Kirkendall]* 223 US 59, 62, 63 (32 S Ct 192, 56 L ed 350). Thus defined and thus limited, it is a vital principle, giving to the Government freedom to meet its exigencies, not binding its action by rigid formulas but apportioning its burdens and permitting it to make those "discriminations which the best interests of society require."'"

The clause "if at least 50% of the membership of the associations or organizations are residents of this state" is not unconstitutional and invalid as a discrimination based on residence prohibited by section 1 of the Fourteenth Amendment to the Federal Constitution guaranteeing equal protection of the law.

The order of the State tax commission is affirmed. No costs, a public question being involved.

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In The
SUPREME COURT OF THE UNITED STATES
October Term, 1963

No. 231

WABANINGO BOY SCOUT CAMP, A Michigan Nonprofit Corporation,

vs.

Appellant,

MICHIGAN STATE TAX COMMISSION,

Appellee.

EVANSTON Y.M.C.A. CAMP. A Michigan Nonprofit Corporation,

vs.

Appellant,

MICHIGAN STATE TAX COMMISSION,

Appellee.

Appeals from the Supreme Court of Michigan

MOTION TO DISMISS OR TO AFFIRM

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Appellee.

Appeals from the Supreme Court of Michigan

MOTION TO DISMISS OR TO AFFIRM[1]

[1]
Unless otherwise indicated, numbers in parentheses refer to pages of the Jurisdictional Statement; numbers in parentheses preceded by "Wabaningo" and followed by "a" refer to pages in the printed appendix in that cause in the Supreme Court below; and numbers in parentheses preceded by "Evanston" and followed by "a" refer to pages in the printed appendix in that cause in the Supreme Court below.

Pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, appellee moves that appellants' appeals from the judgments entered by the Supreme Court of Michigan on February 5, 1963, in the case of *Evanston Y.M.C.A. Camp* v. *Michigan State Tax Commission*, 369 Mich 1, 118 NW 2d 818, and on February 6, 1963, in the case of *Wabaningo Boy Scout Camp*. v. *Michigan State Tax Commission*, 369 Mich 165, 119 NW 2d 648, which judgments affirmed the orders of the Michigan State Tax Commission (Evanston 33a-34a; Wabaningo 27a-28a), be dismissed on the following grounds:

1. Appellants have not properly raised any federal question.

2. Appellants do not present a substantial federal question.

3. The judgments of the Supreme Court of Michigan are conclusive.

In the alternative, appellee moves that the judgments of the Supreme Court of Michigan, which affirmed the orders of the Michigan State Tax Commission, be affirmed on the ground that it is manifest that the questions on which the decision of these causes depends are so unsubstantial as to need no further argument.

OPINIONS BELOW

The opinions of the Court below, and references thereto, are correctly set forth by appellants (1-2, 6-7-8, 1a-12a).

JURISDICTION

Appellants attempt to invoke jurisdiction of this Court under 28 U.S.C.A. § 1257(2). For the reasons set forth herein, the appeals should be dismissed or affirmed.

STATUTES INVOLVED

The statute involved is correctly set forth by appellants (3-4) and the history of the statute is properly analyzed in the opinion of the Supreme Court of Michigan (3a-5a).[2]

---

[2] For convenience, paragraph Fourth of § 7 of the general property tax law of Michigan [Act 81 of the Public Acts of 1949, as amended by Act No. 155 of the Public Acts of 1960 (CL 1948, § 211.7; MSA § 7.7)] is set forth as follows:

"The following property shall be exempt from taxation:—

* * *

"Fourth. Such real estate as shall be owned and occupied by library, benevolent, charitable, educational or scientific institutions and memorial homes of world war veterans incorporated under the laws of this state with the buildings and other property thereon while occupied by them solely for the purposes for which they were incorporated. Also charitable homes of fraternal or secret societies. Also real estate not to exceed 100 acres of land in this state owned by any boy or girl scout organization, or by young men's Christian associations or young women's Christian associations, if at least 50% of the membership of the associations or organizations are residents of this state, while occupied by them solely for the purpose for which they were incorporated or established. Also real estate, with the buildings and other property thereon, owned and occupied by any non-profit trust and used for hospital or public health purposes; * * *."

QUESTIONS PRESENTED

Appellants' Jurisdictional Statement does not properly state any federal question. As Michigan nonprofit corporations, appellants are in no position to urge that they have been denied equal protection of the laws, as compared to nonresident individuals or corporations.

We believe the only possible federal question to be:

> Can the State of Michigan distinguish, for ad valorem property tax exemption purposes, between camp facilities available to the use of its residents, as compared to camp facilities available to the use of nonresidents?

In the language of the Supreme Court of Michigan:

> "This is not a case where the legislature singled out a particular class denoted 'nonresidents' for the purpose of imposing a tax. No discrimination between 'residents' and 'nonresidents' is involved, since appellant is a Michigan corporation.
>
> "The only constitutional question refers to the power of the legislature to classify property for ad valorem property tax exemptions by determining it would exempt from taxation certain associations and organizations when 50% of their membership resided in Michigan. * * *" (11a)

By its Motion to Dismiss or Affirm, appellee raises the following issues:

1. Have appellants properly raised any federal question?

2. Have appellants properly presented a substantial federal question?

3. Are the judgments of the Supreme Court of Michigan conclusive?

STATEMENT OF THE CASE

Appellee cannot accept appellants' Statement of the Case. There is no question but that each appellant is incorporated in Michigan as a nonprofit membership corporation. There is not a scintilla of evidence presented to substantiate the allegation that these corporations in fact operated and conducted themselves as nonprofit corporations. Neither is there merit to the statement that these corporations would have been exempted from real property taxation, if it were not for the amendment setting forth the membership requirement.

There is no question concerning the timeliness of the appeals by appellants from the decisions of their respective local boards of review to the Michigan State Tax Commission and from there to the Supreme Court of Michigan.

Although appellants placed the equal protection constitutional argument in issue in the Supreme Court of Michigan, such an argument was not made before the Michigan State Tax Commission whose orders were reviewed by the Supreme Court of Michigan. Appellant Wabaningo alleged that the action of the board of review was not in compliance with the law, that it was contrary to appellant's just rights, and that it was in violation of Act No. 155 of the Michigan Public Acts of 1960 (the amendment specifying the 50 per cent membership requirement

in § 7 of the general property tax law of the State of Michigan) (Wabaningo 7a). Evanston Y.M.C.A. Camp likewise alleged no federal constitutional question in its petition filed with the Michigan State Tax Commission (Evanston 6a). In their applications for leave to appeal to the Michigan Supreme Court, both appellants alleged the denial of equal protection.[3]

These causes involve the status for Michigan general ad valorem property tax purposes of the real property of appellants located in Michigan. The Supreme Court of Michigan held that the appellants had not factually brought themselves within an exempt category prescribed in the statute and, therefore, their real property located in the State of Michigan was subject to general ad valorem property taxes on the tax day (December 31, 1960) for the tax year 1961.

If the appellants had factually established that they were benevolent, charitable, educational or religious organizations, or if they had established that their camp facilities were used by Michigan residents in substantial part (50 per cent at least), presumably they would have been granted the ad valorem property tax exemption here in question. However, in their attempt to qualify for the exemption, appellants provided in their articles of incorporation that

---

[3]

The applications allege the equal protection question as follows:

"The constitutional validity under Article 4 of Section 2, and the Fourteenth Amendment, of the Federal Constitution, guaranteeing equal privileges in the several states, and equal protection of the laws, to the citizens of each state and prohibiting discrimination based on residence, is involved in the requirement under said statute of residence in the State of Michigan to entitle the taxpayer to the exemption." (Evanston 35a-36a; Wabaningo 30a)

50 per cent of the corporate members were to be residents of the State of Michigan.[4]

As stated by the Supreme Court of Michigan in the Evanston Y.M.C.A. case (5a-7a):

> "Appellant evidently proceeds on the fallacious theory that it is entitled to exemption unless the commission [the Michigan State Tax Commission] established that it was not entitled to an exemption.
>
> • • •
>
> "Appellant did not claim the right of exemption under the provisions referring to charitable, benevolent or educational institutions at the hearing before the board of review or the State tax commission.
>
> "Appellant matched the legislature's 1960 amendment granting young men's Christian associations exemption on 400 acres of land if 50% of the membership are residents of the State, by executing (November 30, 1960) an amendment to its articles of incorporation and filing a certificate of same with the Michigan corporation and securities commission disclosing:
>
> > "'The qualifications required of officers and members are as follows:—That they be members in good standing of the Y.M.C.A. of Evanston, Illinois, provided, at least 50% of such members shall be residents of the State of Michigan.'"

[Material in brackets added]

---

[4] They also had to be members of the Y.M.C.A. of Evanston, Illinois, in the case of Evanston Y.M.C.A. Camp and of the Evanston Council, Boy Scouts of America, of Evanston, Illinois, in the case of Wabaningo Boy Scout Camp.

The appellants rely upon the cases of

National Ass'n for The Advancement of Colored People v. *Alabama*, 357 US 449, 459-460 (1958),

International Harvester Co. v. *Wisconsin Dept. of Taxation*, 322 US 435, 440 (1944),

Voeller v. *Neilston Warehouse Co.*, 311 US 531, 537 (1941),

First Unitarian Church of Los Angeles v. *County of Los Angeles*, 357 US 545, 547 (1958), and

Travis v. *Yale & Towne Mfg. Co.*, 252 US 60, 75,

to support their equal protection argument. In each of these cases, the legal rights of the parties bringing the actions were directly involved. In the *N.A.A.C.P.* case, this Court held that such an organization had a close enough nexus with its members to permit it to act as their representative. *Voeller* v. *Neilston Warehouse Co.*, *supra*, held that a corporation properly represented a majority of its stockholders on an issue that was previously approved by the majority. In that case, the interest of the corporation as well as that of its stockholders was directly affected.

The same was true in reference to *International Harvester Co.* v. *Wisconsin*, *supra*, 322 US 435, and *Travis* v. *Yale & Towne Mfg. Co.*, *supra*, 252 US 60. In the latter cases, the corporations were liable for the income taxes required to be withheld from income payments to non-residents.

In the instant cases, only the appellants' legal rights are in question and they are Michigan nonprofit corporations. Furthermore, they are instruments of Illinois corporate entities and it is not their members who are adversely

affected by the denial of the tax exemption in question, but rather the members of the Illinois Boy Scout and Y.M.C.A. organizations.

It is therefore respectfully submitted that the relationship of appellants to those who use the camp facilities in the State of Michigan is too remote and too inconsequential and unsubstantial for appellants to be in a position to raise the equal protection argument here posed.

2.

Appellants do not present a substantial federal question.

Assuming, arguendo, that the apellants could raise a discrimination question, still the equal protection clause is not violated by the resident-membership requirement of Act No. 155 of the Michigan Public Acts of 1960. There is in fact no discrimination based on residence of the taxpayer. The membership of a Michigan Y.M.C.A. or Boy Scout organization (incorporated or unincorporated) is treated exactly as that of a non-Michigan Y.M.C.A. or Boy Scout organization.

Furthermore, appellants overgeneralize by contending that classification for tax exemption purposes cannot turn upon residence requirements. The authorities establish that not all discriminations between residents and nonresidents are prohibited by the due process and equal protection clauses of the federal Constitution, but only those discriminations based upon an unjustified, arbitrary classification.

As stated in

> 16A *C.J.S.*, Constitutional Law, § 478, subsection b., p 223:

"A statute does not contravene the constitution because it taxes for state purposes only stock in a local corporation owned by a nonresident and for local purposes only such stock owned by a resident, or taxes the transfer, under the will of a nonresident decedent, of debts due decedent by citizens of the state, or taxes the right to succeed to property in the state on the death of a nonresident owner, or exempts from a transfer tax only gifts to be used for education, religion, or charity within the state, or taxes deposits in foreign banks at a higher rate than those in domestic banks.* * *"

As otherwise stated in

85 *C.J.S.*, Taxation, § 1123, p 867:

"The legislature may properly exempt gifts to domestic charitable corporations while taxing gifts to foreign charitable corporations. Neither the unwritten law nor the federal Constitution prohibits discrimination between citizens and foreigners in regulations for the transmission of the property of deceased persons, * * *."

Thus, it has traditionally been held that a state may impose an inheritance tax at a higher rate on residents than on nonresidents.

In re Estate of Anderson, 166 Iowa 617, 147 NW 1098, aff'd 245 US 170 (Citing *Frederickson* v. *Louisiana*, 64 US (23 How) 445, 16 L ed 577.

Furthermore, for inheritance tax purposes, foreign charitable, religious or educational corporations have been denied exemptions granted domestic corporations without

infringing on any constitutionally guaranteed equality of treatment.

People v. *Woman's Home Missionary Soc. of M.E. Church*, 303 Ill 418, 135 NE 749.

Classification of taxable transfers for inheritance tax purposes can vary with the residence of a donee of a power of appointment. Thus, if the donee of the power of appointment was a resident of New York, the transfer by the decedent donor was not taxable for inheritance tax purposes; however, if the donee of the power of appointment was a nonresident, the same transfer was taxable.

In re Davidson's Estate, 258 NYS 42, 236 App Div 684[7]

The effect of the Fourteenth Amendment on the state's power to tax is stated thusly in

Maxwell v. *Bugbee*, 250 US 525, 542, 40 S Ct 2, 63 L ed 1132:

"• • • • • The 14th Amendment does not diminish the taxing power of the state, but only requires that

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[7]

In so concluding, the New York Supreme Court cited the following cases concerning discrimination between residents and nonresidents (258 NYS 44):

American Tank Car Corp. et al v. *Day*, 270 US 367, 373, 46 S Ct 234, 70 L ed 635

Travelers' Ins. Co. v. *Connecticut*, 185 US 364, 22 S Ct 673, 46 L ed 949

Board of Education of Kentucky Annual Conference of The Methodist Episcopal Church v. *Illinois*, 203 US 553, 27 S Ct 171, 51 L ed 314, 8 Ann Cas 157

Beers v. *Glynn*, 211 US 477, 484, 29 S Ct 186, 53 L ed 290

Maxwell v. *Bugbee*, 250 US 525, 541, 542, 40 S Ct 2, 63 L ed 1124

in its exercise the citizen must be afforded an opportunity to be heard on all questions of liability and value, and shall not, by arbitrary and discriminatory provisions, be denied equal protection. It does not deprive the state of the power to select the subjects of taxation. But it does not follow that because it can tax any transfer (New York ex rel. Hatch v. Reardon, 204 U.S. 152, 159, 51 L. ed. 415, 421, 27 Sup. Ct. Rep. 188, 9 Ann Cas. 736), that it must tax all transfers, or that all must be treated alike.'

"In order to invalidate this tax it must be held that the difference in the manner of assessing transmission of property by testators or intestates, as between resident and nonresident decedents, is so wholly arbitrary and unreasonable as to be beyond the legitimate authority of the state. We are not prepared so to declare. The resident testator or intestate stands in a different relation to the state than does the nonresident. * *" (Emphasis supplied)

In the more recent case of

United States v. *Burnison et al.*, 339 US 87, at p 95:

this Court referred to the equal protection, privileges, and immunities clauses of the Fourteenth Amendment as follows:

"In a sense, of course, the United States is being treated differently from California, and differences and distinctions in a state's treatment of persons are frequently claimed to be discriminatory in violation of the Equal Protection and Privileges and Immunities Clauses of the Fourteenth Amendment. But such differences and distinctions, even when applied to persons

clearly protected by the Fourteenth Amendment, are not in themselves unconstitutional. *It is only when the variations are arbitrary and without reasonable legal basis that an unconstitutional discrimination occurs.* A long line of decisions has molded this judicial concept. Thus, although we should make the somewhat dubious assumption that the United States must receive equal protection under the Fourteenth Amendment, there is no constitutional violation. California's decision to permit only itself and its subordinate municipalities to be unlimited governmental beneficiaries under the wills of its domiciliaries is based on a permissible distinction. It is justified by reason of the state's close relationship with its residents and their property.' ' '" (Emphasis supplied)

It is thus respectfully submitted that in the instant cases no constitutional provision is violated, for a state legislature has authority and power to classify the taxable status of real property used for camp site purposes by its own residents differently than the status of such facilities when used by nonresidents.

This draws us to the only pertinent constitutional consideration, namely, the power of the state legislature to classify property for ad valorem property tax exemption purposes, which is an entirely different consideration from that of singling out a particular class denoted "nonresidents" for the purpose of imposing a tax.

The power of the legislature to classify persons or property for tax purposes has been before this Court on numerous occasions. If the classification adopted by the legislature can be justified under any assumed set of circumstances, the classification is constitutional. Clearly, the state legislature in the instant cases is fostering a valid

public policy by encouraging the existence and maintenance of camps for its resident youth. This alone completely negates any constitutional argument of appellants.

This power of classification is well stated in

Banner Laundering Co. v. *State Board of Tax Administration*, 297 Mich 419, 432-433, 298 NW 73,

quoting from

Citizens' Telephone Co. v. *Fuller*, 229 US 322, 328, 329, 331; 33 S Ct 833; 57 L ed 1206:

"'• • • In Michigan the legislature has the power of prescribing the subjects of taxation and exemption, notwithstanding the Constitution of the State requires the legislature to provide a uniform rule of taxation, except on property paying specific taxes. *People* v. *Auditor General*, 7 Mich. 84; *Board of Supervisors* v. *Auditor General*, 7 Mich. 84; *Board of Supervisors* v. *Auditor General*, 65 Mich. 408; *National Loan & Investment Co.* v. *City of Detroit*, 136 Mich. 451. The power of exemption would seem to imply the power of discrimination, and in taxation, as in other matters of legislation, classification is within the competency of the legislature. We said in *American Sugar Refining Co.* v. *Louisiana*, 179 U.S. 89, 92, (21 Sup. Ct. 43, 45 L. Ed. 102), that from time out of mind it has been the policy of this Government to classify for the purpose of taxation. • • •

"'Granting the power of classification, we must grant Government the right to select the differences upon which the classification shall be based, and they need not be great or conspicuous. *Keeney* v. *Comptrol-*

ler of New York, 222 U.S. 525, 536 (32 Sup. Ct. 105, 56 L. Ed. 299, 38 L.R.A. [N.S.] 1139). The State is not bound by any rigid equality. This is the rule; its limitation is that it must not be exercised in "clear and hostile discriminations between particular persons and classes." See [*Quong Wing* v. *Kirkendall*] 223 U.S. 59, 62, 63 (32 Sup. Ct. 192, 56 L. Ed. 350). Thus defined and thus limited, it is a vital principle, giving to the Government freedom to meet its exigencies, not binding its action by rigid formulas but apportioning its burdens and permitting it to make those "discriminations which the best interests of society require." ' • • •"

As stated in

Watson et al., Executors of Watson, v. *State Comptroller of the State of New York*, 254 US 122, 124-125:

"• • • Any classification is permissible which has a reasonable relation to some permitted end of governmental action. • • • It is enough, for instance, if the classification is reasonably founded in 'the purposes and policy of taxation.' • • •"

Williamson, Attorney General of Oklahoma, et al., v. *Lee Optical of Oklahoma, Inc., et al.*, 348 US 483:

"• • • The prohibition of the Equal Protection Clause goes no further than the invidious discrimination. • • •"

A more recent classification case,

McGowen et al., v. *Maryland*, 366 US 420,

upheld the power of the State of Maryland to permit only certain commodities to be sold by certain retail establishments on Sunday. This Court stated, at pp 425-426:

> "Appellants argue that the Maryland statutes violate the 'Equal Protection' Clause of the Fourteenth Amendment on several counts. * * *
>
> "* * * The constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective. * * * A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it. * * *"[8]

Specifically in regard to classification based upon residence, this Court stated as follows, speaking through Justice Holmes, in

Douglas v. *New York, New Haven & Hartford RR Co.*, 279 US 377, at p. 387:

> "* * * A distinction of privileges according to residence may be based upon rational considerations and has been upheld by this Court, emphasizing the difference between citizenship and residence * * *. There are manifest reasons for preferring residents in access to often overcrowded Courts, both in convenience and in the fact that broadly speaking it is they who pay for maintaining the Courts concerned."

---

[8] Comparable language is used by the Court in *Phillips Chemical Co.* v. *Dumas Independent School District*, 361 US 376, 382, in resolving a question of tax discrimination against those doing business with the federal government.

In

Board of Education v. *Illinois, supra,* 203 US 553,

it was held that it was not an unreasonable or arbitrary classification for a state to exempt from inheritance taxes only such property bequeathed for charity or educational purposes as shall be bestowed within its borders or exercised by persons or corporations under its control. In so holding, this Court stated at p 563:

> "* * * A Federal court would hesitate indeed to put impediments on this power or declare invalid any classification of persons or corporations that had reasonable regard to the purposes of the State and its legislation. *And it cannot be said that if a State exempts property bequeathed for charitable or educational purposes from taxation it is unreasonable or arbitrary to require the charity to be exercised or the education to be bestowed within her borders and for her people, whether exercised through persons or corporations.*" (Emphasis supplied)

The authorities relied upon by the appellants do not establish a denial of equal protection in the instant cases or the unconstitutionality of the classification employed by the Michigan legislature. In

Wheeling Steel Corp. v. *Glander*, 337 US 562, 568 (1949),

Hanover Fire Ins. Co. v. *Harding*, 272 US 494, 516 (1926),

Travis v. *Yale & Towne Manufacturing Co., supra*, 252 US 60, 79-80 (1920), and

Southern Railway Co. v. *Greene*, 216 US 400, 417-418 (1910),

the question at issue was whether or not a state could discriminate, taxwise, against a foreign corporation. In the instant cases, the exemption is directly related to the use and occupancy of the camp sites, by reference to the residents of the Boy Scout and Y.M.C.A. members, and is not related to the ownership of the camp sites by Michigan or by foreign corporations.

In

Allied Stores of Ohio v. *Bowers*, 358 US 522, 530-533 (1959),

this Court upheld an Ohio property tax exemption which favored a nonresident who placed property in warehouse storage in Ohio.

It is submitted that these cases do not in any way detract from the authorities cited hereinbefore. In fact, in *Allied Stores of Ohio, supra*, 358 US 522, this Court carefully noted the relationship between the equal protection clause of the federal Constitution and the power of classification for tax exemption purposes. It there noted that state taxation may discriminate in favor of certain classes; that it cannot be assumed that state legislative enactments are adopted arbitrarily or without good reason in furtherance of some legitimate policy of the state; that the equal protection clause protects parties only against invidious or palpably arbitrary classification; and that if any legitimate purpose can be conceived for the classification employed by the legislature, it will be upheld.

As found by the Supreme Court of Michigan in the instant cases, the purpose of the exemption in question is to encourage the utilization of real property in the State of Michigan for camp facilities for the use and occupancy of

Michigan youth. It is respectfully submitted that this is legitimate state action; that it serves a meaningful and purposeful public policy of the State of Michigan; and that it involves no more unconstitutional classification than the requirement that a nonresident pay a higher fishing or hunting fee in the State of Michigan than does a resident.

3.

The judgments of the Supreme Court of Michigan are conclusive.

This Court has held on numerous occasions that it will not disturb findings or conclusions of fact if supported by competent evidence, nor will it change the construction or operative effect given to state taxing statutes if supported by the statutory language. In the instant cases, the Supreme Court of Michigan specifically found that the operative effect of Act No. 150 of the Michigan Public Acts of 1960 was to grant an exemption from ad valorem property taxation, based upon the use and occupancy of real property in the State of Michigan for the health and welfare of the youth of the State. The Court found that the staute was not designed to discriminate against nonresident Y.M.C.A. or Boy Scout members. The classification employed was found not to turn upon the residence of the owners of the property (that is, whether appellants are domestic or foreign corporations, or whether their formal members are residents or nonresidents of the State of Michigan).[9]

---

[9] Undoubtedly, the Supreme Court of Michigan took into consideration the fact that ad valorem property taxes in Michigan are local levies, the proceeds of which are used solely for the operation of local governmental units, including school districts. Thus, the ex

It is respectfully submitted that such conclusions and findings of the Michigan Supreme Court have ample support in the record and clearly establish that appellants' argument is devoid of substance.

CONCLUSION

The appellants are attempting to invoke alleged constitutional safeguards belonging to nonresidents to relieve themselves, as Michigan corporations, from ad valorem property taxation under the guise that those persons who use the camp facilities in Michigan stand in the same relationship to the Michigan property tax as do the appellants and that the appellants stand in the same relationship to the equal protection clause of the federal Constitution as do the nonresidents.

Since neither of these suppositions is true, it is clear that the appellants are not in a position to present an equal protection argument to this Court. Furthermore, the invalidity of these suppositions demonstrates the lack of substance in the appellants' equal protection argument, even though they could speak for the nonresident users of the Michigan camp facilities. If anyone is denied equal protection of the laws it would be appellants as Michigan corporations and not the Boy Scout or Y.M.C.A. members. Conversely, if anyone has a standing to raise the question of denial of equal protection because of invidious discrimina-

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emptions granted are closely connected to the objectives sought by imposition of ad valorem property taxes in the first instance. Under such circumstances, it is unreasonable to say that the State of Michigan is engaged in invidious discrimination in granting the ad valorem property tax exemption here questioned. Appellants' claim that they are denied equal protection of the laws is equally unreasonable and untenable.

tion it is the Boy Scout and Y.M.C.A. members, rather than the appellants.

However, the appellants have not been denied equal protection of the laws in any event, inasmuch as they are treated identically with all other owners of real property in the State of Michigan. The non-resident Boy Scout and Y.M.C.A. members have not been denied equal protection of the laws because they have been deprived of no rights. They have not been subjected to any tax by the State of Michigan. Therefore, the appeals in question are without merit.

RELIEF

It is respectfully submitted that this Honorable Court should dismiss the appeals or affirm the judgments of the Supreme Court of Michigan.

Respectfully submitted.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 231

WABANINGO BOY SCOUT CAMP,
A Michigan Nonprofit Corporation,

Appellant,

vs.

MICHIGAN STATE TAX COMMISSION,

Appellee.

No. 232

EVANSTON Y.M.C.A. CAMP,
A Michigan Nonprofit Corporation,

Appellant,

vs.

MICHIGAN STATE TAX COMMISSION,

Appellee.

Appeals from the Supreme Court of Michigan

APPELLANTS' BRIEF OPPOSING APPELLEE'S MOTION TO DISMISS OR AFFIRM

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QUESTION PRESENTED

Although appellee asserts a contrary conclusion, appellee's admissions reveal that appellants have presented a substantial Federal question.

Appellee asserts (p. 4) that "appellants' jurisdictional statement does not properly state any federal question." But soon thereafter appellee's own admissions (pp. 4, 6) reveal that this conclusion is erroneous. For appellee states (p. 4):

> "We believe the only possible federal question to be:
>
> > "Can the State of Michigan distinguish, for ad valorem property tax exemption purposes, between camp facilities available to the use of its residents, as compared to camp facilities available to the use of nonresidents?"

Then appellee states (p. 6):

> "If the appellants * * * had established that their camp facilities were used by Michigan residents in substantial part (50 per cent at least), presumably they would have been granted the ad valorem property tax exemption here in question."

Thus appellee concedes that appellants are, by paragraph Fourth, as construed by the Michigan Court, denied the tax exemption granted other Boy Scout and Y.M.C.A. organizations solely because appellants' Boy Scouts and Y.M.C.A. youth are nonresidents. This is the same "question presented" set forth in our jurisdictional statement (p. 4), and it presents a question of equal protection of the laws under the authorities there cited (pp. 7-10).

STATEMENT OF THE CASE

Except by making two erroneous assertions, appellee does not attempt to contradict or question any statement in appellants' statement of the case.

Although appellee asserts (p. 5) that it "cannot accept appellants' statement of the case," appellee actually does

not attempt to contradict or question any statement therein except by the making of two erroneous assertions.

First, appellee states (p. 5): "There is not a scintilla of evidence presented to substantiate the allegation that these corporations in fact operated and conducted themselves as nonprofit corporations." Appellee's statement is not correct. In the proceedings before appellee, the Tax Commission, appellants filed sworn statements that they have always operated, and used their camp properties, within the limitations of their articles as nonstock, nonprofit, membership corporations. *(Wabaningo App. 4a, 6a, 14a, 19a; YMCA App. 4a, 6a, 12a, 15a, 18a). These sworn statements have never been denied. They are part of the record on which appellee Tax Commission acted and which was before the Supreme Court of Michigan. (Wabaningo App. 1a-2a, 27a-28a; YMCA App. 1a-2a, 33a-34a). These sworn statements are the type of evidence which is receivable before the Tax Commission in proceedings to determine whether property is exempt from taxation under the exemption statutes. *In re Dearborn Clinic and Diagnostic Hospital*, 342 Mich. 673, 71 N. W. 2d 212 (1955).

Actually, appellants made no direct "allegation" in their statement of the case that they "in fact conducted themselves as nonprofit corporations." The presumption exists until the contrary is proved that a corporation of limited powers acts within those powers and does not act *ultra vires*. *Cincinnati, N. O. & T. P. Railway Co.* v. *Rankin*, 241 U. S. 319, 327 (1916).

Appellee's only other disagreement with our statement of the case is the assertion (p. 5): "Neither is there merit

* The parenthetic references (Wabaningo App.) and (YMCA App.) refer to the printed appendices of the record certified here from the Supreme Court of Michigan.

to the statement that these corporations would have been exempted from real property taxation, if it were not for the amendment setting forth the membership requirement." That is not correct. For many years before the amendment of paragraph Fourth in 1960 appellants had been exempted by the statute from real property taxation to the same extent that all other Boy Scout and Y. M. C. A. organizations were exempted, Y. M. C. A. property being wholly exempt and Boy Scout property up to 160 acres. (Juris. St. 4a). The 1960 amendment changed that (id.), and appellee admits (p. 6), by the quotation we have set out above, that except for the amendment (or if 50 per cent of appellants' members were Michigan residents) appellants would still be enjoying such exemptions.

Appellee observes (p. 5) that the question of equal protection under the 14th Amendment was first presented in appellants' applications for leave to appeal from the decision of appellee Tax Commission to the Supreme Court of Michigan. The Court granted the application and considered and ruled on the question. (Juris. St. 10a, 12a). That adequately brings the Constitutional issue here. *Raley* v. *Ohio*, 360 U.S. 423, 436 (1959). Moreover, that issue first emerged from the Tax Commission's decision.

ARGUMENT

1.

Appellants are proper parties in interest to present the Constitutional issue.

Under its Part 1, page 8, appellee argues (pp. 8-11) that appellants lack standing to sue. Appellee's first point in support of that contention is (p. 8) that since appellants are Michigan Corporations "a question of discrimination between residents and nonresidents is not involved in this proceeding," and therefore appellants cannot invoke the Constitutional issue on their own behalf.

This point has no merit. Since appellants are denied tax exemption solely because the Boy Scouts and Y.M.C.A. youth who use their camps are nonresidents, appellants are the victims of discriminatory taxation, and they have standing to invoke on their own behalf the equal protection clause of the 14th Amendment, under the principles of the cases cited on page 9 of our Jurisdictional Statement.

Appellee then contends (p. 9) that appellants are not "in a position to espouse the cause of nonresident Boy Scouts or Y.M.C.A. youth" who use their camps. Appellants do not rest their standing on that basis. Our position is that due to our close relationship with the nonresident youth we have standing to attack paragraph Fourth on our own behalf because of the discrimination it works upon us by reason of that relationship. Our position is squarely supported by the cases cited in our Jurisdictional Statement (pp. 9-10), and it was originally set forth immediately preceding those citations (foot p. 8, top p. 9).

Appellee's three numbered points (p. 9) only emphasize the solid foundation for appellants' standing to sue. The

first two points can be considered together. They are that there is no "direct relationship" between appellants and the Illinois youth who use the camps, and that the requirement that appellants pay taxes "bears no direct or legal relationship" to such youth.

On their face these contentions lack any merit. Appellants' liability for taxes is created solely by the fact that Illinois youth attend the camps. This demonstrates that there is both a direct and a legal relationship between appellants and these youth, and between these youth and appellants' liability for taxes, that gives appellants standing to sue. See, for example, *Pierce* v. *Society of Sisters*, 268 U.S. 510, 530, 534-536 (1925), cited and briefly explained in our Jurisdictional Statement (p. 9).

Appellants, for many years exempt from taxation to the same extent as all other Boy Scout and Y. M. C. A. organizations, were denied that exemption by the 1960 amendment (Juris. St. 3) solely because their membership, as the word was construed by the Michigan Court, are nonresident Boy Scouts and Y. M. C. A. youth (Juris. St. 5-6). Thus there is a clear financial impact upon appellants solely because their members are nonresidents.

Going now to the record, it there appears that there is a direct and legal corporate relationship between appellants and their Illinois youth who use their camps. Appellants' respective articles of association show that appellants are expressly designed and authorized to provide and operate camp facilities for, and to train and discipline, the Boy Scouts and Y.M.C.A. youth who use them. Thus Wabaningo's articles, adopted and filed in 1924, provide in part (Wabaningo App. 23a) that the corporate purpose is:

> "To promote through organization, the ability of boys to do things for themselves, and others, to train them

> to scout craft, and to teach them patriotism, courage self reliance, and kindred virtues, using the strictly educational program and methods which are now in common use by Boy Scouts; * * * to provide benevolent and charitable means whereby boys may obtain physical, social, moral, and religious culture, and the development of good character and citizenship through life in the out of doors * * *."

The Y.M.C.A. Camp articles, adopted and filed in 1923, employ similar phraseology. (YMCA App. 20a).

Appellee's third point (p. 9) is that there is no showing that the youth who use the camps are adversely affected by the denial of the tax exemption. Whatever may be the materiality of this point, appellee's statement is not correct. The articles of each appellant provide:

> "A charge, based upon the actual cost of operation and maintenance, may be levied upon such persons as may attend the camp and be able to pay therefor." (Wabaningo App. 24a-25a; YMCA App. 21a.)

Any charge, such as taxes, increases the costs that must be paid by the campers. Appellants, the taxpayers, have a corporate duty and legal standing to contest the validity of these taxes. *International Harvester Co.* v. *Wisconsin Department of Taxation*, 322 U.S. 435, 440 (1944); *Travis* v. *Yale & Towne Manufacturing Co.*, 252 U.S. 60, 75 (1920), both cited in our Jurisdictional Statement (p. 9).

Appellee's footnote observation (p. 8), that "technically neither appellant is a Y.M.C.A. or Boy Scout organization," is shown to be without foundation by the undisputed facts set forth in our Jurisdictional Statement (pp. 4, 5, 10); in brief, Wabaningo Boy Scout Camp is a corporation wholly owned and controlled by Evanston Council of the Boy Scouts of America, and Evanston Y.M.C.A. Camp is a

corporation wholly owned and controlled by Evanston Y.M.C.A. Wabaningo was incorporated in 1924 and its declared purpose in its articles, brief excerpts from which are set out above, mark it as nothing else but a "Boy Scout organization." (Wabaningo App. 22a-27a). Evanston Y.M. C.A. Camp was incorporated in 1923 and its articles similarly show it to be a "Young Men's Christian Association." (YMCA App. 20a-24a).

Appellee says (p. 10) that "it is not [appellants'] members who are adversely affected by the denial of the tax exemption in question but rather the members of the Illinois Boy Scout and Y. M. C. A. organizations." The Michigan Court held that "membership" in paragraph fourth means the youth attending the camps. (Juris. St. 5-6). These youth are Boy Scouts or Y. M. C. A. youth of the Illinois organizations; the youth members of the related Michigan and Illinois organizations are identical.

Appellee states (p. 10) that appellants "are instruments of Illinois corporate entities." This is true, but appellants have a very close and active relationship with their Boy Scout and Y. M. C. A. youth members; they are live and active instruments. They furnish training, inspiration, and discipline for their members and they finance the camps by charges upon their members, as shown by the above extracts and other provisions of their articles. (Wabaningo App. 22a-27a; YMCA App. 20a-24a).

Thus it is idle for appellee to say (p. 11) in closing its argument on standing to sue, that the relationship between appellants and their members who use the camps "is too remote and too inconsequential and unsubstantial for appellants to be in a position to raise the equal protection argument here posed," when (1) in fact that relationship is very close and intimate, and (2) as a matter of law that

relationship brings into play the statutory discrimination against appellants and deprives them of the exemption.

2.

The inheritance tax cases cited by appellee (pp. 11-21) rest upon a special principle of state sovereignty not applicable here.

Appellee's argument captioned "Appellants do not present a substantial federal question" (pp. 11-21) is based upon inheritance tax cases, which are not applicable here. The principle of these cases is that since a state has the power to determine who shall take property by devise or descent, it may discriminate against nonresidents and others in respect both of the right to inherit and the level of inheritance taxes. See *Maxwell* v. *Bugbee*, 250 U.S. 525, 540-542 (1919) cited by appellee (p. 13).

The principle of the inheritance tax cases is *sui juris*. It has never been extended to any other form of taxation. No discrimination in other forms of taxation based on nonresidence has ever been sustained, so far as we can discover, and appellee cites no authority therefor.

The absolute inapplicability of the inheritance tax principle to ad valorem property taxes is demonstrated by comparing *United States* v. *Burnison*, 339 U.S. 87 (1950), with *Phillips Chemical Co.* v. *Dumas Independent School District*, 361 U.S. 376 (1960), both cited by appellee (pp. 14, 18). *Burnison* sustained a California statute which made devises to the United States invalid even though California permitted devises to the state and its subdivisions. The Court held that this discriminatory treatment was within the state's power, citing *Maxwell* v. *Bugbee*, *supra*.

But in *Phillips Chemical Co.* v. *Dumas Independent School District*, *supra*, 361 U.S. 376, the Court held invalid a Texas statute that exempted from ad valorem taxation state property leased to a private concern, while denying exemption to Federal property leased to a private concern, as an unconstitutional discrimination against the United States. Thus the Court held in effect that the inheritance tax principle did not apply to ad valorem property taxes.

The only tax cases cited by appellee rest on the inheritance tax principle. Appellee's non-tax cases deal with general principles of classification and are not relevant.

Appellee argues (p. 21) that the statute "involves no more unconstitutional classification than the requirement that a nonresident pay a higher fishing or hunting fee in the State of Michigan than does a resident." That argument has no validity in respect to operations on the scale of summer camps. In *Toomer* v. *Witsell*, 334 U.S. 385, 395-403 (1958), and *Mullaney* v. *Anderson*, 342 U.S. 415 (1952), commercial fishing licenses higher for nonresidents than for residents were held unconstitutionally discriminatory.

Following the *Toomer* decision *Edwards* v. *Leaver*, 102 F. Supp. 698 (D. C. R. I. 1952), held invalid under the equal protection clause of the 14th Amendment a Rhode Island statute because it had characteristics similar to the one here in issue. It forbade taking fish from the waters of the state by foreign corporations, and by domestic corporations 50 per cent or more of whose stock was owned by nonresidents, and it required that 51 per cent of the crew of a licensed boat must be residents of the state.

3.

The judgments of the Supreme Court of Michigan are not conclusive.

Appellee argues under its point 3 (p. 21) that "The judgments of the Supreme Court of Michigan are conclusive." Appellee says that the Michigan Court found that the purpose of the exemption was "for the health and welfare of the youth of the State" [of Michigan]. But this purpose cannot justify a discrimination against appellants solely because the youth using their camps are nonresidents. *Toomer* v. *Witsell*, *supra*, 334 U.S. 385, 397-399; *Phillips Chemical Co.* v. *Dumas Independent School District*, *supra*, 361 U.S. 376, 383-385. Appellee further says: "The Court found that the statute was not designed to discriminate against nonresident Y. M. C. A. or Boy Scout members." We submit that no such finding can be spelled out, but even if it could it would not be binding on this Court. See cases cited in our Jurisdictional Statement, page 8. These cases dispose of all of the other contentions in appellee's point 3. There is no merit in them.

CONCLUSION

It should be noted that appellee does not question our argument in our Jurisdictional Statement (pp. 11-12) that the 1961 amendment does not in any respect relieve paragraph Fourth from unconstitutionality.

We have fully dealt with the arguments that are repeated and summarized in appellee's conclusion and there is no need to repeat our arguments here.

We are constrained to suggest, however, that appellee's summary presents startling vistas. Assume a discrimina-

tory statute directed at corporations having Negro stockholders. Under appellee's theory (pp. 22-23) the corporation could not object since it is not a Negro, and the stockholders could not object since the statute discriminates only against the corporation.

The question here presented is so substantial as to require plenary consideration by the Court. Appellee's motion should be denied.

Respectfully submitted,

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